IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.8.2005.

CORAM

THE HON'BLE MR.JUSTICE AR.RAMALINGAM

C.R.P.(NPD)No.1583 and 1584 of 2002

1. S.Rajam	1st petitioner in CRP No.1583 of 2002/Sole Petitioner in CRP No.1584 of 2002
2. M.E.Boomappan	
3. T.S.Saradha	
4. M.E.Gowrisankar	
5. M.E.Srinivasan	
6. M.E.Girija	
7. M.E.Singaravelu	Petitioners 2 to 7 in CRP 1583 of 2002 alone

vs.

M/s.Raja Stores, rep.
by its Proprietor
S.Ravichandran,
32, North Mada Street,
Mylapore, Chennai-4. Respondent in both CRPs

Civil Revision Petition against the decretal order dated 19.9.2001 in R.C.A.Nos.746 and 744 of 1997 passed by the Appellate Authority (VIII Judge, Court of Small Causes), Chennai reversing the order dated 22.4.1997 in R.C.O.P.Nos.1479 and 879 of 1995 on the file of the Rent Controller (XIII Judge, Court of Small Causes), Chennai.

For petitioners: Mr.S.S.Mathivanan

For respondent : Mr.S.Navaneethakrishnan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ORDER

Aggrieved against the order passed by the appellate authority cum VIII Judge, Court of Small Causes, Chennai in R.C.A.No.746 of 1997 and 744 of 1997 in and by which the eviction order passed by the Rent Controller cum XIII Judge, Court of Small Causes, Chennai in R.C.O.P.Nos.1479 and 879 of 1995 has been set aside, the landlords have filed these revision petitions.

2. The landlords' case before the Rent Controller in brief can be narrated as hereunder:-

The petition mentioned premises belong to the landlords and the respondent herein viz., M/s.Raja Stores is the tenant of the premises and the agreed tenancy is according to English calendar month. The tenant is continuing the business in metal works even after his father's death who originally became the tenant of the premises. Whileso, the tenant is not regular in paying the rents and has also committed wilful default in payment of rents from September 1992 onwards inspite of repeated demands made by the landlords. Therefore, the tenant is liable to be evicted on the ground of wilful default under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act.

3. Both the petitions were resisted by the tenant by filing counter to the effect that even from the lifetime of his father, the tenant viz., Ravichandran is conducting the business in the petition mentioned premises on monthly tenancy arrangement. He has not committed wilful default in payment of rents. On the other hand, it is usual on the part of the landlords to collect the rents from the tenant in lumpsums and thereby, no notice demanding the payment of rents monthwise was issued by the landlords. In such circumstances, the tenant cannot be found fault as if he has committed wilful default and thereby liable to be evicted from the premises.

4. After having considered the oral and documentary evidence, the Rent Controller cum XIII Judge, Court of Small Causes has found and come to the conclusion that there is wilful default on the part of the tenant and consequently, ordered for eviction in both the petitions. On appeal in R.C.A.Nos.744 and 746 of 1997 preferred by the tenant, the appellate authority cum VIII Judge, Court of Small Causes has reversed the finding and set aside the order of eviction.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. Learned counsel appearing for the revision petitioners, after taking me through the entire oral and documentary evidence, submitted that the reversal order passed by the appellate authority is not proper and justified and instead the order of eviction passed by the Rent Controller alone is proper and justified and that the question of wilful default in payment of rents in substance has to be appreciated upon the facts and circumstances of each case and particularly the conduct of the tenant and the landlords in paying and receiving the rents. Even though the appellate authority has relied upon the ruling of the Honourable Supreme Court reported in RASHIK LAL v. SHAH GOKULDAS (AIR 1989 SC 920) and reversed the order of eviction, the facts and circumstances of the said ruling cannot be exactly made applicable to the facts and circumstances of the case on hand.

6. He further pointed out that in the above cited ruling relied on by the appellate authority is a case where the tenant alone was to make payment of rents in lumpsum ranging from two months to four months at a time and it was accepted by the landlord without any protest or objection regularly and thereby the Honourable Supreme Court has held that the understanding can be inferred to the effect that payment of rent can be made in lumpsums if it is convenience, etc. But, in this case, it is pertinent to note that the tenant has not only paid the rents in lumpsum to the landlords previously but also failed to pay rents month after month even after filing of both the R.C.O.Ps. On the other hand, it is the evidence of P.Ws.2 and 3 to the effect that they were demanding the monthly rents, but, the tenant only failed to pay the rents regularly and was going on to pay it in lumpsums and without any other go, it was received by the landlords then and there.

7. It was further submitted by the learned counsel appearing for the revision petitioners that even during the cross examination of PW1 made on 29.10.1996, it has been suggested by the tenant as

"மாதாமாதம் கேட்டும் கொடுக்காததால் என் மனைவி தான் எதிர் மனுதாரர் கடையில் பாத்திரம் வாங்கி, அதை வாடகையில் கழித்துக் கொள்வது வழக்கம் என்று சொன்னால் அது சரியல்ல."

So, it is clear from the suggestion that the landlords without no other go only have chosen to purchase vessels from the shop of the tenant and adjust the rents and nothing else. Therefore, he further pointed out that it cannot be stated by the tenant that no demand was made by the landlords for payment of monthly

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

rents regularly. It was further pointed out that the tenant and particularly RW1 Ravichandran has gone to the extent of issuing cheques towards payment of rents due for many months and those cheques also have been dishonoured for want of sufficient funds and subsequently, after some time such cheque amounts have been paid as evidenced by Exs.P4 to P9. Further, the tenant has chosen to pay arrears of rent even after filing of the two R.C.O.Ps and he was going on giving cheque to be dishonoured and then paying the amount and getting receipts and those receipts also have been received by him without prejudice to the merits of those R.C.O.Ps.

8. Therefore, the conduct of the tenant in this case clearly goes to indicate that he was never regular in payment of rents and particularly even after filing of the R.C.O.Ps., he was not regular in paying rents and such conduct is nothing but a wilful one. No doubt, the landlords have been receiving the rents in lumpsums without any other go and it does not mean that the landlords have given a go-by to the monthly tenancy arrangement. Considering the conduct of the tenant and the landlord, I am of the view that the conduct of the landlords appears to be reasonable and the conduct of the tenant only appears to be a wilful one in not having paid the rents regularly month after month as per the monthly tenancy arrangement.

9. It is also not the stand or evidence of the tenant that inspite of his tendering or payment of rents regularly month after month, the landlords alone were not ready to receive the same and if it is so, it is not the attempt of the tenant to invoke the relevant provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act to deposit the rents before the Rent Controller to show his promptness and regularity in payment of rents. It is also not necessary on the part of the landlord that they should file application under section 11(4) in each case in order to get the rents. Taking note of the above observed factors from the oral and documentary evidence and other circumstances, it is needless to say that the tenant has committed wilful default in payment of rents and consequently, the reversal order passed by the appellate authority cum VIII Judge, Court of Small Causes is not a proper and justified one and in turn, it is liable to be set aside and the order passed by the Rent Controller only has to be restored.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. Accordingly, both the civil revision petitions are allowed and the order passed by the appellate authority is set aside. No costs. Time for vacating the premises by the tenant is two months.

ssk.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar,
   Court of Small Causes,
   Chennai.

2. The Record Keeper,
   V.R.Section,
   High Court, Chennai.

+ 2 ccs to Mr.S.Navaneethakrishnan, Advocate SR No.36144, 36143

+ 2 ccs to Mr.S.S.Mathivanan, Advocate SR Nos.35816, 35817.

P.D. ORDER IN C.R.P.(NPD)
Nos.1583 & 1584 of 2002

JRG(CO)
SR/19.9.2005

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/